

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 22, 2023

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards, recusing
John B. Howard, dissenting
David J. Valesky
John B. Maggiore

CASE 10-T-0139 - Application of Champlain Hudson Power Express,
Inc. for a Certificate of Environmental
Compatibility and Public Need Pursuant to
Article VII of the PSL for the Construction,
Operation and Maintenance of a High Voltage
Direct Current Circuit from the Canadian Border
to New York City

ORDER APPROVING ENVIRONMENTAL MANAGEMENT AND CONSTRUCTION PLANS
FOR SEGMENTS 8 AND 9
SUBJECT TO CONDITIONS

(Issued and Effective June 26, 2023)

BY THE COMMISSION:

INTRODUCTION AND BACKGROUND

On April 18, 2013, the Public Service Commission
(Commission) issued a Certificate of Environmental Compatibility
and Public Need (CECPN or Certificate)¹ to Champlain Hudson Power

¹ Case 10-T-0139, Order Granting Certificate of Environmental
Compatibility and Public Need (issued April 18, 2013) (CECPN
Order).

Express, Inc. and CHPE Properties, Inc. (Certificate Holders).² The Certificate authorizes the construction, operation, and maintenance of a High Voltage, Direct Current transmission line extending approximately 330 miles from the New York/Canada border to a converter station in Astoria, Queens known as the Champlain Hudson Power Express Project (Project or Facility) pursuant to the requirements of Article VII of the Public Service Law (PSL). Since its approval in 2013, the Commission has approved seven amendments to the Certificate.

The Certificate Conditions contain several requirements for compliance, including a requirement that the Certificate Holders submit for public review and Commission approval an Environmental Management and Construction Plan (EM&CP) detailing the Facility design, construction and maintenance plans, and environmental controls in accordance with the EM&CP Guidelines set forth in Appendix E to the Certificate.³ The Certificate provides flexibility for the Certificate Holders to develop the Facility in segments in order to facilitate construction sequencing and scheduling.⁴ As such, as proposed and subsequently authorized by the Commission, the Project is being divided into several overland and marine segments which

² For the purposes of this Order, "Certificate Holders" represents both past and current Certificate Holders. In August 2020, CHPEI converted from a corporation (CHPEI) to a limited liability company (CHPE LLC) and received Commission approval to transfer its CECPN from CHPEI to CHPE LLC. See Case 20-E-0145, Petition of Champlain Hudson Power Express, Inc., CHPE Properties, Inc., and CHPE LLC for a Declaratory Ruling that a Series of Intra-Corporate Transactions are Not Transfers Subject to Review Under the Public Service Law or, in the Alternative, for Certain Approvals Pursuant to Sections 70 and 121 of the Public Service Law, Order Approving Transfers (issued July 17, 2020).

³ CECPN Order, Certificate Conditions 6, 7, and 145 through 164.

⁴ Id., Certificate Condition 6.

will be contained in separate design packages in the EM&CP filings.⁵

The Certificate Holders filed their proposed Rotterdam to Bethlehem (Segment 8) and Selkirk Bypass (Segment 9) EM&CPs on December 21, 2022. On March 26, 27, May 10, and June 12, 2023, the Certificate Holders filed revisions to the Segment 8 and 9 EM&CPs. This Order only pertains to the Segment 8 and 9 EM&CPs, as revised, which cover the construction and operation of the overland transmission cable in the Town of Rotterdam in Schenectady County, New York, and the Towns of Guilderland, New Scotland, and Bethlehem, and the Village of Voorheesville in Albany County, New York.

PUBLIC NOTICE

The Certificate Holders filed their proposed Segment 8 and 9 EM&CPs on December 21, 2022. On March 26, 27, May 10, and June 12, 2023, the Certificate Holders filed revisions to the Segment 8 and 9 EM&CPs. Public notice of the EM&CP filings for review and comment was served on each party on the Service List and on residents, businesses, and building, structure, and facility owners and, to the extent known, operators of the same when such land uses are located within one hundred feet of the horizontal directional drilling (HDD) staging areas, off right-of-way construction access roads, and the overland components of the Facility, relevant railroads and owners of co-located infrastructure whose facilities, properties, and/or structures are within the geographic scope of that portion of the EM&CP that may be impacted, and made available at the public repositories listed on the Service List, in accordance with Certificate Conditions 151 through 155. As further required by

⁵ See Segment 8 and 9 EM&CPs (filed December 21, 2022), Table 1-1 for a schedule of anticipated EM&CP filings.

Certificate Conditions 153 and 155, the Certificate Holders published notice in three local newspapers of general circulation in the Towns where the proposed construction is located. In accordance with Certificate Conditions 153 and 155, on May 4, 2023, the Certificate Holders filed the affidavits of service and proofs of publication.

The 30-day comment period, required by Certificate Condition 155(a)(8), ended on January 20, 2023, for the Segment 8 and 9 EM&CPs. Three public comments pertinent to the Segment 8 and 9 EM&CPs were received on January 19, 20, and May 18, 2023, which are addressed below. Any comments previously submitted, and any additional comments received, that are pertinent to future EM&CP segments, will be addressed during the review of the relevant EM&CP filings.

Staff of the Department of Public Service (DPS Staff), the Department of Environmental Conservation (NYSDEC) and the Department of Agriculture and Markets (NYSAGM) provided informal comments and recommendations and took part in technical meetings with the Certificate Holders.

This Order approves the Segment 8 and 9 EM&CPs, as revised, so that the Certificate Holders may begin construction of the Rotterdam to Bethlehem and Selkirk Bypass portions of the overland transmission cable, pursuant to the Certificate.

THE EM&CP, COMMENTS AND RESPONSES

The Certificate Holders' Segment 8 and 9 EM&CPs, as filed on December 21, 2022, and revised on March 26, 27, May 10, and June 12, 2023, provide both typical and site-specific techniques, procedures, and requirements to be followed in development of the Project by the Certificate Holder to ensure environmental impacts avoidance, minimization, and mitigation. The Segment 8 & 9 EM&CPs identify and define the scope of work

relevant to this phase, including: construction access; protective measures for streams, wetlands, threatened and endangered species, cultural resources, scenic resources, and recreational areas; and the Certificate Holders' organizational framework to ensure implementation of the EM&CPs. The standards for the EM&CPs are described in the Joint Proposal and its appendices, particularly the Certificate Conditions (Appendix C of the Certificate), EM&CP Guidelines (Appendix E of the Certificate) and the Best Management Practices (BMPs) (Appendix F to the Certificate).

Allowed Deviation Zone

The Certificate Order approved a Facility route, which is depicted on a series of maps included in Appendix B of the Joint Proposal showing a nominal centerline and an Allowed Deviation Zone (ADZ). In the event that construction work is proposed to be outside of the approved ADZ, Certificate Condition 156 allows for limited exceptions "for appropriate environmental and engineering reasons" provided they are "the minimum extent necessary" and are detailed and justified, with supporting documentation, in the EM&CP. Certificate Condition 157 further provides that all "deviations from the design depth, height, and location of facilities or structures shall be presented in the proposed EM&CP for approval." Additionally, Certificate Condition 157 provides that "[d]eviations shall be allowed for appropriate environmental or engineering reasons without modification to this Certificate, except where a conflict with a specific provision of this Certificate would be created." Pursuant to Certificate Condition 157, the Certificate Holders submitted "Justification for Excursions Outside the Deviation Zone" as Appendix E to the Segment 8 and 9

EM&CPs on December 21, 2022; and submitted revised on March 27, 2023.

According to the Certificate Holders, all work will be located within the ADZ for Segments 8 and 9, except for twenty-two locations for Segment 8 and two locations for Segment 9. The ADZ in Segments 8 and 9 are located almost entirely in CSX Rail right-of-way (ROW) and the Certificate Holders stated that they attempted to propose installation of facilities within the currently approved ADZ. However, adherence to CSX requirements and avoidance of obstacles have caused CHPE to propose minor shifts along the Project route outside of that ADZ. The twenty-two permanent deviations from the ADZ for Segment 8 are being requested to allow for additional space at certain splice vault and HDD locations, ensure adherence to CSX clearance requirements, avoid structures or natural features, and to accommodate planned track expansions. The two requests for permanent deviations from the ADZ for Segment 9 are being requested to allow for additional space at a splice vault location and to avoid a structure and natural feature. The design plan sheets with deviations from the ADZ for Segments 8 and 9 are shown in Table 1.3 of the Narrative and Table 1 of Appendix E of the Segments 8 and 9 EM&CPs.

The above listed modifications to the route which will require deviation from the ADZ are grounded in sound engineering and environmental reasons. Additionally, no significant increase in permanent environmental, agricultural, or cultural impacts are expected from the construction and operation of the Facility along the excursions from the approved ADZ presented in the Segment 8 and 9 EM&CPs.

DPS Staff

DPS Staff reviewed the Segment 8 & 9 EM&CPs and provided informal comments, took part in technical meetings, and provided recommendations to the Certificate Holders and their consultants. DPS Staff suggested revisions and clarifications to the design plans as well as other parts of the EM&CPs. In addition, DPS Staff requested revisions or clarification on subject areas including co-located infrastructure, soil disposal and management restoration, traffic controls, and cultural resources. We are advised that DPS Staff's recommendations were adequately addressed and resolved in the revised Segment 8 and 9 EM&CPs filed on March 26, 27, May 10, and June 12, 2023.

NYSDEC

NYSDEC Staff reviewed the Segment 8 and 9 EM&CPs and provided informal comments and recommendations and took part in technical meetings with the Certificate Holders and their consultants. NYSDEC Staff suggested revisions to the design plans and other parts of the EM&CPs, primarily with respect to rare, threatened, and endangered species, wetlands and waterbodies, and invasive species monitoring and management.

NYSDEC Staff advises that the Certificate Holders adequately addressed and resolved all its comments in the revised Segment 8 and 9 EM&CPs as filed on March 26, 27, May 10, and June 12, 2023.

NYSAGM

NYSAGM Staff reviewed the Segment 8 and 9 EM&CPs and provided informal comments and recommendations and took part in technical meetings with the Certificate Holders and their consultants. NYSAGM Staff suggested revisions to the design plans and other parts of the Segment 8 and 9 EM&CPs. These

suggestions included, but were not limited to, trenching in agricultural lands, access road types and locations, topsoil stripping, grading and agricultural restoration.

NYSAGM Staff advises that the Certificate Holders adequately addressed and resolved all of their comments in the revised Segment 8 and 9 EM&CPs as filed on March 26,27, May 10, and June 12, 2023.

Public Comments

On January 19, 20, and May 18, 2023, three public comments were filed regarding the Segment 8 and 9 EM&CPs from property owners in the Towns of Slingerlands, Bethlehem, and New Scotland. The first commenter requested that the public comment period be extended from 30 to 120 days. The second public commenter requested that the Project route be altered to move the transmission cable further from the commenter's home. The second public commenter further indicated that the current route of the transmission cable would impact their ability to work from home, transition to public sewer and water, and increase their safety risk due to the proximity of the transmission cable. The third public comment was submitted by an attorney representing a property owner along the Segment 8 EM&CP route. The commenter indicated that proposed tree clearing along the property line and within the CSX ROW would eliminate a crucial windbreak for the property owner's farmland. The commenter further requested that CHPE arrange a follow-up site visit to address concerns and that this Segment of the EM&CP be denied approval until such concerns have been addressed.

CHPE provided responses to the above listed public comments as part of the updated Segment 8 and 9 EM&CPs, filed on May 10 and June 12, 2023. In response to the request to extend the comment period, CHPE notes that the EM&CPs were submitted on

December 21, 2022, which has allowed for a public comment period of 140 days. DPS Staff notes that although the CECPN Order established the 30-day EM&CP comment period, the public may file comments any time during the construction or operation phase of the Project, regardless of whether it is outside of the 30-day EM&CP comment period, and will consider concerns related to the EM&CP, construction, and operation of the Project, as appropriate.

In response to the commenter's request to move the transmission cable further from their property, the Certificate Holders indicated that all work proximate to that residence will take place within the highway ROW. CHPE noted that given the complexity of the line, it is not possible to redesign the Facility to completely avoid individual residences and acknowledged that some residents will experience some temporary impacts during construction. CHPE further stated that these impacts will be minimized to the extent practicable by implementing avoidance and minimization measures outlined in the EM&CP narratives, including Section 7 on sensitive land uses, Section 10 on noise, and Section 12 on traffic.

In response to the third commenter's request to avoid tree clearing within CSX ROW, the Certificate Holders indicated that they have been in contact with the property owner, her attorney, and the Town Supervisor, and are committed to working with the property owner to ensure that reasonable mitigation measures occur during construction, restoration, and operation. CHPE further stated that the trees the commenter is seeking to preserve are located on an abutting CSX property and not on property owned by the commenter's client and, therefore, respectfully disagrees that this situation warrants the delay in approving the Segment 8 EM&CP. DPS Staff recognizes the commenters concerns here; however, does not recommend that this

issue delay approval of the Segment 8 EM&CP because there are specific measures prescribed in Certificate Condition 89 that address such concerns. Upon completion of construction of the Facility, Certificate Condition 89 requires the Certificate Holders to provide an assessment of the need for landscaping improvements, including vegetation planting, earthwork, or installed features to screen or landscape and consult with DPS Staff on the content and execution of their landscape improvement assessment. In the interim, DPS Staff is willing to meet with the landowner and CHPE representatives to further address the matter.

DPS Staff acknowledges that residents may experience temporary impacts during construction activities; nonetheless, the Certificate Holders must comply with Certificate Conditions, and make all reasonable efforts to minimize impacts during such activities; Certificate Holders are required to follow measures outlined in the EM&CP narratives, including Section 7 on sensitive land uses, Section 10 on noise, and Section 12 on traffic and any other applicable sections. As indicated above, comments may be submitted to DPS anytime during construction and operations phases of the Project and if residents have concerns related to construction activities or operation of the Facility, they are encouraged to file comments describing those concerns.

DISCUSSION AND CONCLUSION

As noted above, DPS Staff, NYSAGM Staff, NYSDEC Staff, and the public, raised various concerns and suggestions regarding the details of the proposed Segment 8 and 9 EM&CPs. Certificate Holders incorporated and resolved the agencies' and public feedback in their March 26, 27, May 10, and June 12, 2023, revisions to the EM&CP filings.

Based upon its review, DPS Staff advises that the revised Segment 8 and 9 EM&CPs comply with the applicable Certificate Conditions and adhere to the EM&CP Guidelines and BMPs included as Appendix E and Appendix F to the Certificate, respectively.

Upon review, the Commission finds that the Certificate Holders have adequately addressed and resolved the concerns raised by DPS Staff and NYSDEC and NYSAGM Staffs. Based upon a review of all the documents submitted, responses received, and revised filings made by the Certificate Holder, the revised Segment 8 and 9 EM&CPs for the Project are approved.

The Commission orders:

1. The Environmental Management and Construction Plans (EM&CPs) for the Rotterdam to Bethlehem (Segment 8) and Selkirk Bypass (Segment 9) submitted by Champlain Hudson Power Express, Inc. and CHPE Properties, Inc. (Certificate Holders) on December 21, 2022, and revised on March 26, 27, May 10, and June 12, 2023, are approved subject to the following conditions.

2. Prior to construction activity affecting Co-located Infrastructure (CI), Certificate Holders shall file any final Agreement (including Road Use Agreements) required by CI owner and/or operator related to existing facilities located within the Construction Zone approved in the EM&CP for the Facility, or a proposed Construction Zone as provided for in Certificate Condition 28(d), and any CI that is either owned by a State agency or municipality, or a subdivision thereof, or owned or operated for public utility purposes by a regulated electric, gas, telecommunication, water, wastewater, sewer, or steam service provider. If a formal agreement is not required by such owner and/or operator of the CI being crossed (or encroached upon), Certificate Holders shall file a copy of an

acknowledgement from the CI owner and/or operator indicating general agreement of crossing or encroachment designs affecting such existing CI (acknowledgment), provided that such acknowledgment was not filed with Segment 8 and 9 EM&CPs. Along with final Agreements, or acknowledgments (not already included in Segment 8 and 9 EM&CPs, Certificate Holders shall provide final design plans including the location of the existing facilities in relation to the proposed Project facilities, means of crossing, descriptions of any safety procedures to be implemented during installation, and proposed mitigation measures for protection of existing facilities. For instances when Agreements or acknowledgments are not secured due to unresponsive CI owners and or operators, the Certificate Holders shall file, at least ten days prior to requesting a Notice to Proceed with construction related to Segment 8 and 9 EM&CPs, a narrative describing efforts made in attempting to get such Agreements or acknowledgments. If any designs (finalized through Agreements, acknowledgments, or field verified locations of existing CI) affecting existing CI result in modification to the proposed location or design of the transmission route or related facilities contained in the Segment 8 and 9 EM&CPs, then the Certificate Holders shall address and request approval for such changes in accordance with the Certificate and any applicable regulations.

3. The Certificate Holders shall not commence construction until it has received a "Notice to Proceed with Construction" letter sent by the Chief of Environmental Certification and Compliance of the Office of Energy System Planning and Performance, or by a designee. Prior to any trenching activities within agricultural land, the Certificate Holders shall provide, via an EM&CP minor change, a final

"Agricultural Trench Detail" for trenching of agricultural lands located along Segments 8 and 9.

4. The Certificate Holders shall schedule construction activities on the Project right-of-way to occur between the hours of 7:00 a.m. through 7:00 p.m. Monday through Saturday, except no work is allowed on federal or State holidays. If, due to safety, planned outage restrictions, or continuous operation requirements, such construction activities are required to occur on a Sunday or holiday or after 7:00 p.m. (Extended Work), the Certificate Holders, after consultation with the affected municipality, shall seek approval from Department of Public Service (DPS) Staff for Extended Work. To the maximum extent practicable, such approval shall be requested at least 24 hours in advance.

5. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary